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To: Microsoft ATR
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Subject: Re: U.S. v. Microsoft: Main Index

In a shocking, I say <I>shocking</I> development, the Department of "Justice" has completely capitulated on the Microsoft antitrust trial, giving a convicted monopolist a light slap on the wrist. Just another example of George Bush helping the rich get richer.

A quick recap of history: in 1998, the DoJ sued Microsoft in federal court for alleged antitrust violations. After months of dubious legal strategy, damning evidence, and ludicrous courtroom behavior, Microsoft was in 2000 convicted by a conservative Federal judge of being a monopoly and abuse of monopoly power. Note the word convicted.

In 2001, seven more Federal judges -- a full sitting of the appeals court, most of them conservative appointees also -- unanimously upheld the bulk of the conviction. Note the word upheld.

Now, after weeks of "negotiation," the DoJ and Microsoft have arrived at a "settlement" that is so full of ambiguities and loopholes that it's not clear that it will have <I>any</I> effect on Microsoft behavior, let alone actually restore balance to the technology industry.

The appeals court ruled that any actions taken against Microsoft (a) must restore competition to the affected market, (b) must deprive Microsoft of the "fruits of its illegal conduct," and (c) must prevent Microsoft from engaging in similar tactics in the future. The settlement fails on every one of these.

I've read a few objections to this position, penned by Microsoft apologists, or Microsoft's buddies at the DoJ, and none of them hold water:

<I>The proposed settlement is strong, and it really will modify Microsoft's behavior.</I>

No, it's not. Ralph Nader (a man I'm not fond of) and James Love have written an open letter which details the deep flaws in the settlement far more eloquently than I can manage. Read that for the details.

<I>That letter assumes the worst about Microsoft's behavior, but Microsoft is good, the settlement will have a positive effect.</I>

History suggests this is not correct. Inserting weasel words and then using them to studiously adhere to their interpretation of the agreement while flagrantly ignoring the spirit is *<I>exactly</I>* what Microsoft did to the last consent decree with the DoJ. Certainly, depending on Microsoft to be "good" is a pretty flawed way to approach handling a convicted and unrepentant monopoly abuser.

*<I>*This antitrust case is all about Microsoft's rivals complaining, not about real consumer harm.*</I>*

If that were really true, I doubt if eight (count 'em, eight) Federal judges would have upheld the conviction. It's not as though they don't understand the law.

And if that were really true, what's up with Microsoft raising the prices on their products? The price of the operating system has been steadily creeping upwards; Windows XP is \$10 more than the prior upgrade, and Microsoft is currently moving corporate customers onto new support programs which will cost twice as much as the old programs.

Explain to me how paying more for a product is not "consumer harm."

*<I>*But Windows XP delivers more value, that's why it costs more.*</I>*

Um, no. Look at other parts of the software industry where there is actual competition. Over time you get more value, and you pay the same or less. I've been upgrading Quicken for many years, getting lots more value in every release, and the price to upgrade is the same. Quicken has competitors, so Intuit can't raise the price. Windows does not have competitors, so Microsoft abuses their monopoly power and raises prices.

*<I>*Microsoft just wants to protect their freedom to innovate.*</I>*

Aha ha ha ha ha ha! Aha ha ha ha ha ha! That's a good one! Aha ha ha ha ha ha!

"Innovation" has nothing to do with it. Microsoft wants to protect their freedom to crush their competitors. Microsoft has never had a reputation for innovation, for good reason; they copy the best ideas from their competitors and put those into Windows in such a way to steer consumers towards other Microsoft initiatives (currently that's MSN and Passport; if you've installed Windows XP, you know exactly what I mean).

*<I>*But if Microsoft can't integrate functionality into Windows, then consumers won't get the benefits of that integration. The integration **is** the innovation.*</I>*

Integration of extended functionality into a user's computing environment is certainly desirable. However, that integration can be done in a way that fosters innovation and competition, or it can be done in an exclusionary way. Guess which way Microsoft has been doing things.

The current settlement proposal recognizes and acknowledges this, and is attempting to change Microsoft's anti-competitive behavior in this area. But the language is so weak and riddled with holes, it depends on Microsoft to be "good," something they have repeatedly demonstrated they don't know how to do.

Final note: I'm not an [alarmist](http://news.cnet.com/news/0-1276-210-7815103-1.html) who see a possible conspiracy in the total capitulation of the DoJ. I think it was a perfectly ordinary case of George Bush making sure that rich people can stay rich, by making the world safe for large corporations to do whatever they want.

But I don't have strong opinions here at all.

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